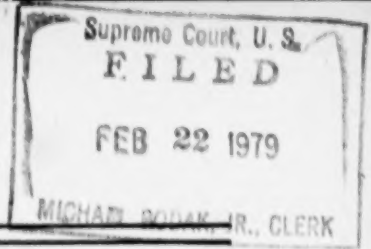


APPENDIX

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**In the Supreme Court of the United States**  
OCTOBER TERM, 1978

No. 78-776

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UNITED STATES OF AMERICA,

*Petitioner,*

—v.—

MILTON DEAN BATCHELDER

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED NOVEMBER 10, 1978  
CERTIORARI GRANTED JANUARY 8, 1979

**In the Supreme Court of the United States**

OCTOBER TERM, 1978

**No. 78-776**

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UNITED STATES OF AMERICA,

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
NORTHERN DIVISION

77 Cr. 10004

UNITED STATES OF AMERICA

*v.*

MILTON DEAN BATCHELDER

RELEVANT DOCKET ENTRIES

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DATE	PROCEEDINGS
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1977

Mar. 16 Indictment, filed

Apr. 6 A.U.S. Atty. & Deft. w/c pres. in o/c. Deft. acknowledges receipt of copy of Indict. & waives having same read in o/c. Court advises Deft. of the consequences if found guilty. Deft. enters plea of Not Guilty & same is rec'd. & entered of record. Existing Bond to remain in full force & effect. *Jury Trial* set for *Thurs., June 16, 1977, at 10:00 A.M.* Ent. (Morgan, J)

April 25 Parties pres. w/c. Motion filed by Atty. Jones to withdraw as Deft's. atty. Motion allowed (See Order) Atty. Charles A. Bellows now enters his appearance for Deft. (See Same) Deft. granted 15 days from today to file any pre-trial motions. Ordered that the Bond herein is amended by extending the territorial restrictions to the State of Ill. (Morgan,J.)

May 9 Motion to Dismiss Indictment for Failure to Give the Deft. a Speedy Trial, and

Motion to Dismiss Indictment for Vagueness and Insufficiency of Information, filed by Deft.

May 18 Set for hearing on motions Fri., May 27, 1977 at 10:00 A.M. Notice sent by Clerk (Morgan, J)

DATE	PROCEEDINGS
1977	
May 23	Response to Def. Motion to Dismiss Indict. for Vagueness & Insufficiency of Information and Memoranda in Support of Motion w/proof of Serv. filed by Government.
May 23	Response to Motion to Dismiss Indictment for failure to give the Def. a Speedy Trial and Memoranda of Law in Response to Motion w/proof of Serv. filed by Government.
May 27	Parties pres. in o/c w/c for hearing on pending motions. Amended motion to dismiss for failure to give Deft. a speedy trial filed. Motion to dismiss for vagueness is denied. Directed by the Court that the U.S. Atty. is to furnish Deft. w/a Bill of Particulars with the maker and the number of the gun in question. Amended Motion to dismiss is also denied. (Morgan, J.)
June 8	Bill of Particulars, filed by pltf. w/prf. ser.
June 16	Mot. to Dismiss filed by Def.
June 16	Parties present by counsel in Ct. Chambers before trial for hearing on Mot. to Dismiss. Counsel for Def. waives presence of Def. Mot. denied (Morgan, J)
June 16	Parties present in o/c w/c. Case called for trial & each side announces readiness. Jury called, selected & sworn (12, no alternate). Opening statements made by counsel. Stipulation of parties read to the Jury by the Ct. & filed. (See same) Evidence presented on behalf of Gov't. Gov't rests. Mot. for Judg. of Acquittal filed at close of Gov't evidence by Def. Hearing. Mot. denied, Evidence presented on behalf of Def. Def. rests. Gov't does not present evidence on rebuttal. Mot. for Judg. of Acquittal at the close of all the evidence filed by Def. Hear. Motion Denied. Time for adjournment having arrived, Trial continued until 9:30 A.M. 6-17-77. (Morgan, J)

DATE	PROCEEDINGS
1977	
June 17	Parties present in o/c w/c. Jury also present & trial resumed w/closing arguments by/c. Jury instructed by the Ct. Two officers sworn to take charge of jury during its deliberations. Jury retires at 11:03 A.M. to consider verdict. Jury taken to Wright's Rest. for Lunch (See order). Jury returns into o/c at 1:48 P.M. w/verdict as follows: "We, the Jury, find the defendant Milton Dean Batchelder, guilty." Ct. inquires of jury about any outside influence on its deliberations. All jurors reply in the negative. Verdict received filed & entered of record. Jury polled at request of Def. & all jurors answer in the affirmative. Jury discharged from further consideration of case. On Mot. of Def. ordered that existing bond remain in full force & effect. Judg. of conviction on verdict entered. Matter referred to Prob. Office for pre-sentence investigation & report. (Morgan, J)
June 21	Motion in Arrest of Judgment w/Affidavit of Mailing filed by Def.
June 24	Notice of Filing & Mot. for a New Trial w/Affidavit of mailing filed by Def.
June 30	Set for Hearing on Pending Motions, Tuesday, July 12, 1977, at 11:00 A.M. Notices sent by Clerk.
July 5	Memorandum in Support of Motion for a New trial, with notice of filing, by Deft., filed.
July 11	Amended Motion for A New Trial, by Deft., filed.
July 12	Set for hearing on motions and possible sentencing Mon., Aug. 1, 1977 at 11:00 A.M. Notice by Clerk. (Morgan, J)

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DATE	PROCEEDINGS
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1977

Aug. 1 Parties pres. in o/c w/c for hearing on pending Motions. Transcript of in camera interview of jurors & news article made part of record. Motion in arrest of Judgment DENIED. Motion for New Trial DENIED. Allocution re. sentence by Counsel. It is ordered by the Court that Def. is committed to the custody of the Atty. Gen. for imprisonment for a period of Five years. Costs of \$65 assessed. (See Judg. & Commitment Order) Def. advised of right to appeal. Motion to Continue bond pending appeal GRANTED. (Morgan, J) Certified copies of Judg. & Comm. Order distributed By Clerk.

Aug. 4 Notice of Filing of Notice of Appeal & Notice of Appeal filed by Def.

Aug. 8 Copy of Notice of Appeal, Docket Sheet & Cr. Info. sheet sent to Ct. of Appeals, Chicago, IL.

Aug. 31 CC of Order from Ct. of Appeals filed: Record due 10-10-77; Def. Brief 11-25-77; Pltf. Brief 12-30-77; Reply 1-13-78.

Sept. 22 Record forwarded to Ct. of Appeals, Chicago, IL.

1978

July 27 Opinion from U.S. Court of Appeals, filed. Judgment vacated & cause remanded so deft. may receive a maximum sent. of 2 yrs. imprisonment instead of 5 yrs. previously imposed. (1 dissenting opinion affirmed)

Dec. 29 PETITION TO REVOKE BOND, filed by pltf. w/ cert. ser.

Dec. 29 MEMORANDA OF LAW, filed by pltf.

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UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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Case No. 77-1819

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UNITED STATES OF AMERICA

*v.*

MILTON DEAN BATCHELDER

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RELEVANT DOCKET ENTRIES

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DATE	PROCEEDINGS
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11/25/77 Filed 15c appellant's brief, svc.

12/13/77 Filed O&3c appellant's motion for leave to file a supplemental brief, svc.

12/15/77 Filed 15c per order appellant's supplemental brief, svc.

12/16/77 Entered order granting motion to file a supplemental brief and the clerk is to file instant the 15c of appellant's brief; further ordered that the appellee's brief be filed by 1/13/78.

12/16/77 Entered order setting appeal for oral argument on Wed. 1/25/78 9:30 am. Oral argument limited to 15 min per/side.

1/16/78 Filed 15c appellee's brief, dist, svc.

1/24/78 Filed 15c reply brief, svc. dist.

1/25/78 Heard and taken under advisement.



DATE	PROCEEDINGS
2/13/78	Filed O&6c appellee's additional authority, dist, svc.
3/21/78	Filed O&6c appellee's additional authority, dist, svc.
7/24/78	Filed opinion by Judge Cummings. Judge McMullen, dissent.
7/24/78	Entered final judgment order VACATED AND REMANDED.
8/3/78	Filed O&3c appellee's motion for extension of time for petition for rehearing (in banc), svc.
8/9/78	Entered order that said motion is GRANTED, and the time for filing a petition for rehearing in banc is extended up to 8/22/78.
8/23/78	Filed 25c appellee's petition for rehearing in banc, dist, svc.
9/12/78	Entered order denying petition for rehearing in banc.
9/19/78	Filed O&3c motion of appellant, for a stay of mandate, svc.
9/25/78	Entered order that said motion is granted, and the mandate is STAYED up to 10/23/78, pending the filing the filing of the petition for writ of cert. to the Supreme Court of the U.S. by the appellee's.
10/6/78	Filed copy of letter to appellant extending time in which to file a petition for writ of cert. until 11/11/78.
10/26/78	Filed O&3c appellant's motion for a stay of mandate, affd., svc.
11/1/78	Entered order granting said motion, and the mandate of this court shall be stayed until 11/13/78 pending filing of cert.
11/16/78	Filed O&3c appellant's motion to stay mandate pending disposition of petition for writ of cert., affd., svc.

DATE	PROCEEDINGS
11/16/78	Filed notice of filing petition for cert. on 11/10/78; Supreme Court No. 78-776.
11/21/78	Entered order that said motion is denied. See note 13 of page 12 of this court's slip opinion dated 8/24/78.
11/27/78	Filed O&3c appellant's motion for reconsideration of denial of motion for stay of mandate, affd., svc.
11/30/78	Entered order that said motion is denied for reasons noted in 11/21/78 order of this court.
1/3/79	Entered order from Supreme Court staying the mandate pending disposition of petition for cert, in the event petition is denied, this order terminates automatically, if petition is granted, order remains in effect pending the sending down of the judgment; further ordered that request for continued admission to bail is DENIED.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
NORTHERN DIVISION

Criminal No. 77-10004

VIO: Title 18, Section 922 (h), United States Code.

UNITED STATES OF AMERICA

v.

MILTON DEAN BATCHELDER

Southern District of Illinois )  
Northern Division ) ss  
)

INDICTMENT

The Grand Jury charges:

That on or about the 31st day of July, 1975, in the Southern District of Illinois, Northern Division, and within the jurisdiction of this Court,

MILTON DEAN BATCHELDER

having been convicted on November 14, 1960, of a crime punishable by imprisonment for a term exceeding one year, did knowingly receive a firearm, that is, a .38 caliber pistol which had been shipped and transported in interstate commerce from Springfield, Massachusetts, to St. Louis, Missouri, in violation of Title 18, United States Code, Section 922 (h).

A True Bill.

/s/ Gerald D. Fines  
GERALD D. FINES  
United States Attorney

/s/ David Keil  
Foreman

By:

/s/ Terry G. Harn  
TERRY G. HARN  
Assistant United States Attorney

IN THE DISTRICT COURT OF THE  
UNITED STATES FOR  
THE SOUTHERN DISTRICT OF ILLINOIS  
NORTHERN DIVISION

Criminal Action

77-10004

UNITED STATES OF AMERICA

—vs—

MILTON DEAN BATCHELDER, DEFENDANT

Monday, August 1, 1977

11:00 o'clock a.m.

Peoria, Illinois

BEFORE:

HON. ROBERT D. MORGAN,  
District Judge.

PRESENT:

TERRY G. HARN, ESQ.  
Assistant U.S. Attorney  
Post Office Building  
Peoria, Illinois,

on behalf of the Government;

CHARLES A. BELLWS, ESQ.  
(Bellows & Bellows)  
One IBM Plaza—Suite 1414  
Chicago, Illinois 60611  
on behalf of the Defendant.

[13] beyond the Constitutional bounds of federal jurisdiction, but I think they extend them as far as they could.

MR. BELLOWS: I can understand that Congress can say, "We don't want certain individuals to carry guns." No question about that. I think it's a good Act. But I think it overstepped the bounds. I mean the prosecution—not the Congress—when they indicted him on a charge on interstate shipment which took place back in '48 when we didn't have such a law—that Congress intended that we go indefinitely before the Act as enacted. I haven't found any cases. I have talked to federal lawyers myself to see what their thought was, because it's interesting to me.

THE COURT: I will say those are pretty scarce, sir.

MR. BELLOWS: Thank you for the compliment. Other than that, your Honor has been most fair and these are trial errors that take place. Your judgment as against the judgment of an adversary lawyer in the case, so I submitted what I thought all the questions involved in this case, your Honor.

THE COURT: Well, on the last point, I do disagree with you, sir. And I think the Supreme Court's recent decision that you refer to does sustain that [14] view, although there are distinguishing points on the facts. I agree with you. The other points, I am willing to ride with the decision made at the time of the trial. And I recognize fully your right to disagree and the possibility that you might be right. Motions, however, will be denied for the reasons stated. And is there any reason why sentence should not be pronounced at this time?

MR. BELLOWS: None, your Honor. I would like to say this: your Honor has been kind enough to have the probation report sent to me and Mr. Batchelder and I have gone over the report. I would like to say this about his previous conviction, your Honor. It was a brawl in a tavern. And by examination of the facts of the case and in discussion with Batchelder and his family, it was really at the most a manslaughter situation but anyway on advice of counsel he pleaded guilty and he served a

lot of time. Really spent a good part of his life in prison as a result of that brawl in the tavern.

In addition, there have been many arrests before that occurred. A great many of them appear to have been disturbances of the peace. And from what I gather they were in taverns or as a result [15] of drinking problem, which he doesn't have any more.

So you have a defendant who was once convicted and served a great deal of time. He came back on violation of parole without benefit of counsel. It was revoked and he served two more years. I think if he had a lawyer at the hearing before the parole board or at parole hearing that might have been a different story.

He has only this one conviction, your Honor, prior to this case and that is unfortunate situation where a man was killed. He is now married. He is a hard worker. He has been employed constantly. These are matters for your Honor's consideration. And his drinking problems have gone and vanished during the years—during the years he was in prison. He did a lot of time. He did about 13 years out of the 25 year sentence. So it's been a tough life. It has been unfortunate that so much of his life has been taken up as a prisoner.

I'm going to ask your Honor—I know this is a serious offense—having a pistol—man who has been previously convicted. I don't deny that it is serious. You take the whole picture of what took place in this case and I think there are mitigating circumstances in view of the fact that [16] there was defense—and your Honor did instruct the jury—there was a question here of entrapment. Maybe it wasn't sufficient, but there was that element that crept into the case. The Government's witness was not brought in. Perhaps, he was unavailable. Mr. Harn said he couldn't find him. Maybe he would have strengthened our case if he had been brought in.

So I ask your Honor in view of the total picture to take this into consideration for your Honor to mete out the minimum sentence your Honor deems advisable in this kind of case.



THE COURT: Will you step up here with your client, sir.

Mr. Batchelder, have you had an opportunity to go over the pre-sentence report with your attorney Mr. Bellows?

THE DEFENDANT: Yes, sir.

THE COURT: And, I take it, you are making your statement—just concluding your statement by way of allocution in mitigation of punishment. Mr. Bellows, is there anything further you wanted to say?

MR. BELLOWES: No, your Honor. I have covered everything. We have gone over every item in that report. Might [17] have been some discrepancy, but not enough really to affect your Honor's judgment in this case.

THE COURT: Is there anything further you would like to say, Mr. Batchelder, in mitigation of punishment or otherwise before the Court imposes sentence?

THE DEFENDANT: No, your Honor. I did not plead guilty, your Honor. And I have a family and have a lot of obligations to them and I work hard and try to do what's right. I didn't know I was committing any illegal acts and that's when this thing happened.

THE COURT: Sir, I have a great deal of difficulty in believing that. State weapons charge in 1976, which you paid a fine of \$500. I take it, that was in connection with these same events?

THE DEFENDANT: Yes, your Honor.

THE COURT: I find it difficult to believe that you didn't know you weren't supposed to be selling guns, sir, and having guns.

THE DEFENDANT: I didn't necessarily sell that gun. I thought I was supposed to own a gun. That was never my gun at no time.

THE COURT: Well, as you well know, you had continual trouble with law enforcement people since you were nineteen years old. Now, I want you to know, sir, [18] that I do not enhance a sentence in this case by any of the some 20 relatively minor offenses which were listed by the probation officer where it is not clear that you did have legal counsel.

THE DEFENDANT: I did not understand.

THE COURT: There are several pages of offenses—some of which were dismissed and some of which fines were paid, which were relatively minor—

MR. BELLOWES: That's where he had a lawyer in these cases.

THE DEFENDANT: I told Mr. Simpson I did, but I can't remember who they were and what cases.

THE COURT: I'm ignoring some 20 offenses where the report doesn't make it clear that you did have counsel, but I do note a prior sentence in the county jail for rioting in 1952 as well as murder sentence which Mr. Bellows referred to. And also the state gun offense in 1976 where you also did have legal counsel, as well as the parole violation in 1972. I don't know whether you had counsel or not. You did serve your time for that. And I don't enhance the sentence in any way on that account.

Now, I simply cannot justify a fine or a short sentence in this case, because—as the jury [19] found and as the Court is fully satisfied—you are guilty, sir. And I just do not believe that you didn't know better. Now, I want you to know that. You may think I should take your word on that, but I'm unable to do so.

It will be the sentence of the Court that you be remanded to the custody of the Attorney General for a term of five years.

Now, I want you to know—I'm sure your attorney has or will advise you—of your right to take appeal from the conviction in this case. However, it's my duty under the Federal Rules of Criminal Procedure to advise you that you do have a right to appeal by filing a notice of appeal in the office of the Clerk within ten days of today.

If for any reason you can't afford to pay for an appeal and counsel on appeal in this case you can apply to appeal in Forma Pauperis by making an affidavit that the Clerk will give you on request. If there is any reason your attorney does not file a notice for you the Clerk upon request will file a notice of appeal within ten days of today. After ten days from today the right

of appeal will be lost. And that's the reason I specifically advise you in that regard.

[20] An appeal is filed—of course, transcript must be ordered and appeal must be prosecuted with dispatch under the Rules of Court of Appeals and Federal Rules of Appellate Procedure for appeal or the appeal might suffer dismissal for failure to comply with the rules.

The costs will be assessed against the defendant as well.

MR. BELLOWS: Your Honor, I've talked to Mr. Batchelder and he intends to appeal this case. He lives with his wife and child and has a home subject to a mortgage and he is employed. Could he remain at large on the same bond pending filing a notice of appeal, your Honor?

MR. HARN: May I be heard on that. The Government would very strongly object to the defendant remaining on bond pending any appeal. I think inconvenience suffered by the defendant by reason of the denial of bond would be short. The appeal would be dealt with in swift fashion.

The pre-sentence report reveals quite a lengthy record. I would point out to the Court that we are not dealing with a simple possession situation. The Defendant's apparent lack of concern for the law I think should be considered by [21] the Court.

THE COURT: There are certain other factors in pre-sentence report. I have read the pre-sentence report. Is there anything further, other than that, that you wish to refer to?

MR. BELLOWS: There are times that a Court can justify a refusal for bail pending appeal where the defendant is a danger to the community. And he is not a danger to the community. He has been here at all times. Whenever the case came up he was present. He has a family that he lives with. He isn't somebody who would disappear tomorrow.

He knows very well that if he didn't show up or fail in his bond requirements he could be subject to another indictment with a penalty up to five years. I wouldn't be requesting, your Honor, bail if I thought he would be committing another offense. As a member

of the bar I owe that much responsibility to the community and the Court that I wouldn't make that representation or request if I thought he was a danger. And I sincerely believe that he is not.

I see no reason why he couldn't remain until we filed our motion for notice of appeal and notice of appeal, which we expect to do today or tomorrow, [22] your Honor, as soon as we get back to the office. And as I say, he isn't any danger and he has a substantial bond up now in the sum of \$10,000.

THE COURT: \$10,000 cash?

MR. BELLOWS: Well, it's ten per cent of the \$10,000, your Honor.

MR. HARN: Your Honor, I would indicate that in light of the Defendant's apparent financial condition that small bond in this case, being \$1,000, is certainly not enough to assure his appearance at any subsequent time. I think at this time the verdict of the jury have been sustained, post-trial motions denied, the Defendant is no longer cloaked in the presumption of innocence which is held to him throughout the trial. Risk of the Defendant leaving the jurisdiction is greater now than has been at any prior time.

MR. BELLOWS: I don't think that statement is justified.

THE COURT: Well, 38(a)(2) I think is applicable. Rule 38(a)(2) I think is applicable and provides a sentence of imprisonment shall be stayed if appeal is taken and Defendant is released pending disposition of the appeal pursuant to Rule 9(b) of Federal Rules of Appellate Procedure. I was looking for the Rule which I think still makes [23] reference to danger to the community that you referred to.

MR. HARN: Your Honor, are you referring to Section 3148, Title 18?

THE COURT: Possibly. Yes, well, that essentially says that after appeal the same provision of the Bail Reform Act shall apply unless there appears to be some substantial danger that didn't exist before. Isn't that—except the word "substantial" I don't think is found there. "If a risk of flight or danger appears to exist

... they should be treated in accordance with provisions of Section 3146 unless the Court or Judge has reason to believe that no one or more conditions of release will reasonably assure the person will not flee or pose a danger to any other person or to the community."

Now, I don't think there is any proper showing of a danger to any other person or to the community, except possibly the offenses of the type that this Defendant has had a penchant mostly, as Mr. Bellows points out, in years sometime ago. At least as far as convictions are concerned. I'm going to permit the release of the Defendant on existing bond pending filing of notice of appeal [24] and during the pendency of any appeal.

You understand, do you, Mr. Batchelder, that any failure to appear here or in the Court of Appeals . . . to the extent that might be required . . . could result in forfeiture of your bond and forfeiture of the cash deposit and judgment against you for the balance of the bond. And that, perhaps, even more important than that, it could result in further Federal charges against you for an offense known as "bail jumping;" do you understand that?

THE DEFENDANT: I understand that, your Honor.

MR. BELLOWES: May I file a written notice of appeal right now or can I send it in from the office?

THE COURT: You can file it later. I have released him pending the filing of an appeal.

MR. BELLOWES: Thank you very much. Your Honor, may I see the transcript, too?

THE COURT: Yes.

MR. BELLOWES: And I want to compliment the probation department in the pre-sentence report they did.

THE COURT: We think they're good.

Anything further?

MR. HARN: Nothing further, your Honor.

MR. BELLOWES: Thank you.

(Hearing Concluded.)

# SUPREME COURT OF THE UNITED STATES

No. 78-776

UNITED STATES, PETITIONER,

v.

MILTON DEAN BATCHELDER

ORDER ALLOWING CERTIORARI—Filed January 8, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.